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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
800 Data Base Access Tariffs and the	)	CC Docket No. 93-129
	)	
800 Service Management System Tariff	)	
	)	
and	)	
	)	
Provision of 800 Services	)	CC Docket 86-10

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BELL ATLANTIC[1] REPLY COMMENTS

Consistent with the requirements of the Commission's order in this proceeding, Bell Atlantic has proposed to refund millions of dollars to 800 data base service customers. Under the terms of that order, Bell Atlantic and other local exchange carriers ("LECs") are required to refund part of the amount they received as a result of a now disallowed exogenous adjustment to recover the costs of implementing 800 data base service. Here, Bell Atlantic has proposed to implement the refund through a prospective adjustment to the price cap indices in the Traffic Sensitive and Trunking Baskets. No party has objected to this methodology, nor has any party objected to the calculations underlying Bell Atlantic's refund. Indeed, AT&T -- one of only two

1 The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

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parties to object to Bell Atlantic's compliance filing -- acknowledged that the underlying calculations "appear to be correct."[2]

Instead, AT&T and MCI argue that Bell Atlantic should have to pay ***more*** than it actually recovered in rates as a result of the disallowed adjustment. Such a windfall is flatly inconsistent with the Commission's order and should be rejected.

I. Price Cap Refund Adjustments Must Be Based on the Actual Prices Charged

Both AT&T and MCI argue that in determining how much to adjust price cap indices today, the Commission should ignore the level of Bell Atlantic's actual prices at the time of the original tariff. But actual prices ("Actual Price Index" or "API") are crucial to determining the real impact of the change mandated by the Commission. In ordering a refund, the Commission found that LECs should return the revenues they received from the disallowed portions of the exogenous adjustment associated with 800 data base service.[3] Consistent with Commission rules, the exogenous adjustment that Bell Atlantic originally made was to the price cap indices ("PCIs"). To the extent that Bell Atlantic had "headroom," i.e. its past API was below its PCI, any increase in the PCI had no impact on actual rates. If rates were not affected by the original exogenous increase, than there is no basis to decrease the current index. Without a rate impact, there can be no overcharge and, as MCI acknowledges, the purpose of the refund here is to "reflect actual overcharges paid by customers."[4] As a result, if Bell Atlantic were to "refund" the disallowed amounts regardless of whether they actually charged for them or not, it would refund

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2 AT&T Comments at 3 (filed Jun. 3, 1997).

3 ***See*** Order on Reconsideration at ¶ 20 (rel. Apr. 14, 1997).

4 MCI Comments at 5 (filed Jun. 3, 1997).

more than the "actual overcharges" and would be providing a windfall to AT&T, MCI and other access customers.

MCI claims that "the Commission has never permitted PCI reductions to be offset by headroom amounts from prior periods."[5] But MCI contradicts its own argument and acknowledges that, in fact, the methodology proscribed in the recent decision on the 1993-96 access tariffs "allows a form of headroom offset."[6] In contrast, the examples cited by AT&T were not refunds and were not intended to capture "actual overcharges."[7]

Moreover, when there has been a backward looking adjustment that does not involve a refund, the Commission has allowed credit for below cap prices. For example, where the Commission adjusted rates to account for a shorter tariff year in 1995 -- an instance cited by AT&T to support its argument for ignoring actual prices -- the Commission granted a waiver to assure that a carrier that did have headroom would "give back" only the amount it actually would have charged for period under review, and not the amount that its PCI would have allowed it to charge.[8] As with a refund, the intent was to place LECs and their access customers in "the same

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5 MCI Comments at 3.

6 MCI Comments at 6; ***see also 1993-96 Annual Access Tariff Filings***, CC Dkt. No. 93-193, Memorandum and Order at Section V (rel. Apr. 17, 1997) ("1993-96 Annual Access Order").

7 ***See*** AT&T Comments at 6-7. AT&T cites to Bell Atlantic's removal of the OPEB exogenous increase. AT&T Comments at 6, note 18. There, Bell Atlantic was removing the prospective impact of a temporary adjustment to the PCI. Bell Atlantic made a similar change for 800 data base service with its prospective adjustment to remove the exogenous costs embedded in the PCI and disallowed by the Commission. In contrast, the refund here must be designed to recover only the past amounts actually paid by customers of the service.

8 ***See NYNEX Telephone Companies, 1995 Annual Access Tariff Filings***, Memorandum and Order, FCC 97-189 (rel. June 4, 1997) ("NYNEX Waiver Order").

position that they would have been" had there been no need for an adjustment in the first place.[9] In the 1995 adjustment, the Commission allowed the adjustment to be based on the APIs because reliance only on the PCIs "would have overstated the revenue effects of delaying the effective date of the 1995 annual access tariffs."[10] In the current situation, reliance only on the PCIs would overstate the amount the carriers actually paid, and thereby overstate the refund.

AT&T and MCI also argue that if the Commission relies on actual prices, the LEC refunds must "take band limits into account."[11] In fact, the restrictions on pricing among the bands, which contain specific restrictions below the basket level, had no impact on the level of Bell Atlantic's actual prices. In each year in question, the difference between the PCI and service band indices ("SBIs") was less than the 5% allowed under the price cap rules.[12] As a result, the SBIs cannot be a limiting factor on Bell Atlantic's adjustment.

MCI also complains that actual price calculations based on annual data may not give an exact picture for any given point in time.[13] But the Commission has recognized that any calculation method is a balance between exact results and undue burden.[14] The goal is to "reasonably approximate" the changes that occurred throughout the year.[15] Using an annual

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9 ***Id.*** at ¶ 8.

10 ***Id.***

11 MCI Comments at 4; AT&T Comments at 4, note 12.

12 ***See*** 47 C.F.R. § 61.47(e). ***See also*** calculations set forth in the attached workpaper (Exhibit 1).

13 MCI Comments at 7-9.

14 ***See*** 1993-96 Access Order at ¶ 98.

15 ***Id.***

average captures all rate changes, and thus is even more inclusive than relying on two individual points a year as endorsed by MCI.

II. Price Cap Refunds Should Be Net of Sharing Impacts

AT&T and MCI also argue that Bell Atlantic should ignore the impact of the adjustment on sharing.[16] But through the sharing mechanism, Bell Atlantic has already returned a portion of the increase in rates that the Commission has disallowed. If the Commission were to require Bell Atlantic to calculate its refund without reference to amounts previously shared, the actual impact would be to pay twice -- first through increased sharing, and second through the PCI reduction that implements the refund.

AT&T argues that sharing is based on "total earnings" and therefore is unrelated to the provision of 800 data base service, which is "only a portion of the total interstate earnings."[17] But AT&T can not dispute that there is a direct and calculable relationship between the additional earnings achieved through the disallowed 800 data base exogenous adjustments and the resulting increased sharing. Indeed, because the Commission has directed that sharing must be distributed among the baskets based on relative revenues, the additional 800 data base revenues earned in the Traffic Sensitive and Trunking Baskets were directly reduced by the amount of additional sharing.[18]

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16 AT&T Comments at 6-7; MCI Comments at 4-5.

17 AT&T Comments at 7.

18 *See* 1993-96 Annual Access Order at ¶ 38. AT&T also argues that LECs are not entitled to the full amount of both a headroom offset combined with the sharing offset. AT&T Comments at 6, note 19. AT&T is correct to the extent that the sharing calculation should be done after adjusting for headroom, so that only the actual sharing impact is captured. Attached as Exhibit 2 is a recalculation of Bell Atlantic's proposed refund adjusted to reflect such a sequential sharing calculation.

III. No Further Adjustments to Bell Atlantic's Proposed Refund Are Warranted

Consistent with the Commission's mandate, Bell Atlantic included in its refund, additional amounts for interest, compounded daily.[19] AT&T nevertheless complains that Bell Atlantic started accruing interest too late.[20] But Bell Atlantic's methodology is fully consistent with Commission rule and precedent. Bell Atlantic began to accrue interest starting January first in the calendar year immediately following the tariff filing in question. This is based on the Commission's own methodology for calculating interest,[21] and AT&T offers no basis to distinguish that precedent.

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19 ***See*** Order on Reconsideration at ¶ 22.

20 AT&T Comments at 9. AT&T also complains that some carriers stopped accruing interest too early. AT&T Comments at 7. AT&T's complaint on this point does not apply to Bell Atlantic. Bell Atlantic's refund is based on continued interest until June 30 -- the point when the refund would actually be included in rates. ***See*** 1993-96 Annual Access Order at ¶ 105 (interest to run until June 30, the time that the prospective adjustments begin).

21 ***See Section 208 Complaints***, 8 FCC Rcd 5485, 5495 (1993).

Conclusion

The Commission should approve Bell Atlantic's refund methodology without modification.

Respectfully submitted,

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EXHIBIT 1

HEADROOM IS LESS THAN 5% OF TOTAL REVENUES

BASKET	SOURCE	1993	1994	1995	1996	1997
Traffic Sensitive						
1. Headroom	Workpaper 4	9,324,589	3,303,342	102,796	316,335	336
2. Basket Revenues	Annual Filing "R" Value	1,012,375,178	485,937,801	516,538,550	482,983,648	548,539,470
3. Percent of Total	L1/L2	0.92%	0.68%	0.02%	0.06%	0.00%
Trunking						
4. Headroom	Workpaper 4		2,681,278	1,210,403	13,778,574	704,772
5. Basket Revenues	Annual Filing "R" Value		854,248,803	920,850,636	924,395,618	1,035,236,186
6. TIC Revenues	Annual Filing		368,964,573	379,521,521	362,736,248	403,296,443
7. Rev. less TIC[1]	L5-L6		485,284,230	541,329,115	561,659,370	631,939,743
8. Percent of Total	L4/L7		0.55%	0.22%	2.5%	0.11%

[1] Since the TIC does not have the 5% SBI growth allowed for other services, TIC revenues were removed in calculating allowable flexibility.

Bell Atlantic

Exhibit 2

800 Data Base Refund Order
Refund Calculation
Dollars in Thousands

		Source	1993 1\	1994	1995	1996	1997 2\	Total
1	FCC Disallowance	Refund Plan, L1, WP1	(4,573)	(6,860)	(6,860)	(6,860)	(232)	(25,386)
2	Traffic Sensitive Share of Ln 1	Ln 1 * 49.7% 3\	(4,573)	(3,411)	(3,411)	(3,411)	(115)	(14,921)
3	Trunking Share of Ln 1	Ln 1 - Ln 2	4\	(3,449)	(3,449)	(3,449)	(117)	(10,465)
4	Traffic Sensitive Headroom	Refund Plan, L6, WP1	9,325	3,303	103	316	0	13,047
5	Trunking Headroom	Refund Plan, L7, WP1	4\	2,681	1,210	13,779	705	18,375
6	TS Headroom Offset	5\	4,573	3,303	103	316	0	8,296
7	Trunking Headroom Offset	5\	4\	2,681	1,210	3,449	117	7,458
8	TS Disallow. Net of Headroom	Ln 2 + Ln 6	0	(107)	(3,308)	(3,094)	(115)	(6,625)
9	Trunk. Disallow. Net of Headroom	Ln 3 + Ln 7	0	(768)	(2,239)	0	0	(3,007)
10	Total Disallow. Net of Headroom	Ln 8 + Ln 9	0	(876)	(5,547)	(3,094)	(115)	(9,632)
11	Sharing Offset	6\	0	0	219	256	128	603
12	TS Share of Sharing Offset	Ln 11 * 49.7% 3\	0	0	109	127	64	300
13	Trunking Share of Sharing Offset	Ln 11 - Ln 12	0	0	110	129	64	303
14	Net TS Disallowance	Ln 8 + Ln 12	0	(107)	(3,199)	(2,967)	(51)	(6,325)
15	Net Trunking Disallowance	Ln 9 + Ln 13	0	(768)	(2,129)	0	0	(2,897)
16	Net Disallowance	Ln 14 + Ln 15	0	(876)	(5,328)	(2,967)	(51)	(9,222)
17	Total Interest Penalty	Compound Daily	0	(194)	(664)	(120)	(2)	(979)
18	Traffic Sensitive Share of Interest	Ln 14 / Ln 16 * Ln 17	0	(24)	(398)	(120)	(2)	(544)
19	Trunking Share of Interest	Ln 15 / Ln 16 * Ln 17	0	(170)	(265)	0	0	(435)
20	Total TS Exogenous Adjustment	Ln 14 + Ln 18	0	(131)	(3,598)	(3,087)	(53)	(6,869)
21	Total Trunking Exogenous Adjst.	Ln 15 + Ln 19	0	(938)	(2,394)	0	0	(3,332)
22	Total Exog. Adjst. with Interest	Ln 20 + Ln 21	0	(1,069)	(5,992)	(3,087)	(53)	(10,201)

Notes 1\ The Company's 800 Data base tariff became effective on 5/1/93.
2\ The Company's 800 Data Base disallowance tariff became effective on 1/15/97.
3\ See Bell Atlantic Transmittal No. 566 for development of 49.7% traffic sensitve factor.
4\ In 1993, 800 Data Base costs were recovered entirely in the traffic sensitive basket.
~~5\ Traffic sensitive and trunking headroom offset can not exceed amounts computed on rows 4 and 5, respectively.~~
~~6\ 1993 through 1995 calculated as - 50% * [L10 (t-1) + L10 (t-2)] / 2; 1996 calculated as - [50% * L 10 (t-2) + $75k] / 2 ($75K relfects Bell Atlantic's total 1995 sharing obligation. 1997 calculated as ($75K + $181K) / 2, or 1/2 of Bell Atlantic's combined 1995 and 1996 sharing obligation.~~

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 1997, a copy of the foregoing "Bell Atlantic Reply Comments" was served by first class U.S. mail to the parties on the attached list.

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